

# Exhibit 1

Excerpts of Plaintiff's  
Responses and Objections to  
OpenAI's First Set of Requests  
for Production

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC.,  
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,  
OPENAI OPCO LLC, OPENAI GLOBAL LLC,  
OAI CORPORATION, LLC, and OPENAI  
HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195-SHS

**PLAINTIFF THE NEW YORK TIMES COMPANY’S RESPONSES AND  
OBJECTIONS TO OPENAI OPCO, LLC’S FIRST SET OF  
REQUESTS FOR PRODUCTION (NOS. 1-61)**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff The New York Times Company (“The Times”) responds to Defendant OpenAI OpCo, LLC’s (“OpenAI OpCo”) First Set of Requests for Production of Documents and Things (the “Requests”) as follows:

**GENERAL OBJECTIONS**

1. The Times objects to each Request to the extent it seeks information or documents subject to attorney-client privilege, work product, or any other applicable privilege or protection.
2. The Times objects to each Request to the extent it seeks documents or information not within The Times’s possession, custody, or control or that are already in the possession, custody, and control of Defendants, on the grounds that such Requests are unduly burdensome and oppressive and therefore exceed the bounds of permissible discovery. The Times will only produce documents within its possession, custody, or control, and will do so in the manner such documents

are kept in the usual course of business. Such productions will be made subject to the terms of the anticipated ESI Order, which has not yet been entered and the parties are currently negotiating.

3. The Times objects that a Protective Order has not yet been entered in the case and production of confidential documents is subject to the entry of a Protective Order. Until a Protective Order is entered, The Times will produce confidential documents subject to an agreement that any documents marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” will be kept confidential before a Protective Order is entered.

4. The Times’s responses are subject to the following objections to the “Definitions” and “Instructions” provided with the Requests.

5. The Times objects to the definitions of “Plaintiff,” “You,” and “Your” insofar as they include The Times’s “managers”—a vague term that is at best duplicative of the term “employees,” which is already part of the definitions. The Times also objects to these definitions because they include The Times’s “parent companies,” of which there are none. The Times further objects to these definitions as overbroad and unduly burdensome insofar as they include “any Person who served in any such capacity at any time,” which among other things would apply to former employees of The Times. The Times further objects to these definitions as contrary to the definition of “Plaintiff” provided by Local Rule 26.3. The Times construes “Plaintiff” as that term is defined in Local Rule 26.3.

6. The Times objects to the definition of “Defendant” as vague and ambiguous because it includes “any defendant named in the Complaint” without specifying a particular defendant. The Times further objects to this definition because it includes defendants named in a “subsequent complaint” that does not yet exist, making the definition even more vague and ambiguous. In any event, the term “Defendant” appears nowhere in the Requests.

7. The Times objects to the definition of “Generative AI” as overbroad and also vague and ambiguous insofar as it includes “other systems,” a virtually limitless term. The Times further objects to this definition as overbroad because it applies to products not implicated by the Complaint, including Gemini and Claude. The Times further objects to this definition as inaccurate insofar as it is limited to models or algorithms that generate “new” content. That definition is inaccurate because the at-issue products generate copies of Times content. The Times construes “Generative AI” to mean Defendants’ AI models that emulate the structure and characteristics of input content in order to generate derived synthetic content, such as images, videos, audio, text, and other digital content.

8. The Times objects to the definition of “Communication” as contrary to the definition of that term provided by Local Rule 26.3. The Times construes “Communication” as that term is defined by Local Rule 26.3.

9. The Times objects to the definition of “Complaint” insofar as it includes “any subsequent complaint” because only one Complaint has been filed in this case. The Times construes “Complaint” to refer to the Complaint filed in this case on December 27, 2023.

10. The Times objects to the definition of “Agent” as overbroad insofar as it applies to a person “asked” to assist with this litigation but not retained by The Times. The Times further objects to this definition as unintelligible because it does not specify who “asked, hired, retained, or contracted” the agent. The Times construes “Agent” to mean a person retained by The Times to assist The Times in connection with this litigation.

11. The Times objects to the definition of “Employee” as illogical insofar as it includes people who are “not” compensated. The Times further objects to this definition as overbroad and unduly burdensome because it applies to “retired” and “former” employees as well as “trustees,”

“officers,” and “directors.” The Times further objects to this definition as vague and ambiguous insofar as it applies to “partners.” The Times further objects to this definition as circular because it includes the term “employee” within the proposed definition, which just proves the term does not need to be defined. The Times construes “Employee” to mean an employee.

12. The Times objects to the definition of “Document” as contrary to the definition provided by Local Rule 26.3, which incorporates by reference the meaning of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). The Times construes “Document” as that term is defined by Local Rule 26.3.

13. The Times objects to the definition of “Asserted Work” as vague and ambiguous insofar as it includes “any additional work that may be listed on an amended complaint.” No amended Complaint has been filed. The Times construes “Asserted Work” to mean any work listed in Exhibits A-I and K of the Complaint.

14. The Times objects to the definition of “Published Work” as overbroad and unduly burdensome insofar as it includes works “created” by The Times but not published. The Times construes “Published Work” to mean registered works published by The Times.

15. The Times objects to the definition of “GPT Services” as overbroad as well as vague and ambiguous because it includes “other third party services”—a term which makes the definition limitless. The Times construes “GPT Services” to mean any GPT-based product, including but not limited to ChatGPT, ChatGPT Enterprise, Bing Chat, Azure OpenAI Service, Microsoft Copilot, and the underlying large language models for these products.

16. The Times objects to the definition of “Electronically Stored Information” as contrary to how that term is described by Federal Rule of Civil Procedure 34. The Times construes the term “Electronically Stored information” consistent with that Rule.

17. The Times objects to the definitions of “Concern,” “Concerning,” “Related to,” and “Relating to” as contrary to the definition of “concerning” provided by Local Rule 26.3. The Term construes these terms to mean “concerning,” as that term is defined by the Local Rule.

18. The Times objects to the Instruction suggesting that “the present tense shall be construed to include the past tense, and vice versa.” The Times will respond to the Requests as written.

19. The Times is willing to meet and confer regarding these Requests.

### **RESPONSES TO REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

All Documents and Communications relating to the alleged reproduction, public display, or distribution of Your Asserted Works via GPT Services.

#### **RESPONSE TO NO. 1:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad, vague, and ambiguous insofar as it seeks “all Documents and Communications” relating to the “alleged reproduction, public display, or distribution” by any person not limited to material that is relevant to any party’s claims or defenses in this dispute. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest. The Times further objects to this Request to the extent that it seeks material protected by the reporters’ privilege pursuant to the First Amendment of the U.S. Constitution or the New York Shield Law, N.Y. Civ. Rights § 79-h. The Times will not search for or produce Documents or Communications protected by the reporters’ privilege in response to this Request.

Constitution or the New York Shield Law, N.Y. Civ. Rights § 79-h. The Times will not search for or produce Documents or Communications protected by the reporters' privilege in response to this Request.

Based on these objections, The Times will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 8:**

All Documents and Communications relating to any allegations that any of Your Asserted Works infringe any third-party rights.

**RESPONSE TO NO. 8:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome because it seeks material not relevant to any party's claims or defenses. The Times further objects to the terms "allegations," "infringe" and "third-party rights" as vague and ambiguous. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest.

Based on these objections, The Times will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 9:**

All Documents and Communications relating to any complaints by any Person regarding alleged plagiarism in Your Asserted Works.

**RESPONSE TO NO. 9:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome because it seeks material not relevant to any

party's claims or defenses. The Times further objects to the term "alleged plagiarism" as vague and ambiguous. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest.

Based on these objections, The Times will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 10:**

Documents sufficient to identify the expressive, original, and human-authored content of each of Your Asserted Works.

**RESPONSE TO NO. 10:**

The Times incorporates the General Objections set forth above. The Times objects to the terms "sufficient to identify," "expressive," "original," and "human-authored content" as vague and ambiguous. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest. The Times further objects to this response to the extent that it seeks material protected by the reporters' privilege pursuant to the First Amendment of the U.S. Constitution or the New York Shield Law, N.Y. Civ. Rights § 79-h. The Times will not search for or produce Documents or Communications protected by the reporters' privilege in response to this Request. The Times further objects to this Request to the extent that it calls for a legal conclusion.

Based on these objections, The Times will not produce documents in response to this Request aside from the works identified in Exhibits A-I, K to the Complaint.

**REQUEST FOR PRODUCTION NO. 11:**

Documents sufficient to identify the non-expressive, non-original, or non-human-authored content of each of Your Asserted Works.



**RESPONSE TO NO. 11:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome to the extent that it seeks material not relevant to any party's claims or defenses and outside the relevant timeframe. The Times further objects to the terms "sufficient to identify," "non-expressive," "non-original," and "non-human-authored content" as vague and ambiguous. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest. The Times further objects to this response to the extent that it seeks material protected by the reporters' privilege pursuant to the First Amendment of the U.S. Constitution or the New York Shield Law, N.Y. Civ. Rights § 79-h. The Times will not search for or produce Documents or Communications protected by the reporters' privilege in response to this Request. The Times further objects to this Request to the extent that it calls for a legal conclusion.

Based on these objections, The Times will not produce documents in response to this Request aside from the works identified in Exhibits A-I, K to the Complaint.

**REQUEST FOR PRODUCTION NO. 12:**

Documents sufficient to show each and every written work that informed the preparation of each of Your Asserted Works, regardless of its length, format, or medium.

**RESPONSE TO NO. 12:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome to the extent that it seeks material not relevant to any party's claims or defenses. The Times further objects to the terms "written work," "informed the preparation," "format," and "medium," as vague and ambiguous. The Times further objects to this response to the extent that it seeks material protected by the reporters'

privilege pursuant to the First Amendment of the U.S. Constitution or the New York Shield Law, N.Y. Civ. Rights § 79-h. The Times will not search for or produce Documents or Communications protected by the reporters' privilege in response to this Request.

Based on these objections, The Times will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 13:**

All Documents and Communications relating to any disputes as to the ownership of Your Asserted Works, including but not limited to DMCA Takedown Notices or other copyright infringement removal requests received by You.

**RESPONSE TO NO. 13:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome to the extent that it seeks material not relevant to any party's claims or defenses, including "DMCA Takedown Notices" which apply to user-submitted content. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest.

Based on these objections, The Times will not produce documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 14:**

All Documents and Communications relating to Your correspondence with the United States Copyright Office regarding Your Asserted Works, including deposit copies.

**RESPONSE TO NO. 14:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome to the extent that it seeks "[a]ll Documents and

Communications” relating to The Times’s correspondence with the USCO “regarding” the Asserted Works, without limitation to documents relevant to any party’s claims or defenses. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest.

Subject to these objections, The Times will produce deposit copies for the Asserted Works that can be located after a reasonable search.

**REQUEST FOR PRODUCTION NO. 15:**

All Documents and Communications relating to Your ownership of the Asserted Works, including agreements related to the authorship of Your Asserted Works and work-for-hire agreements.

**RESPONSE TO NO. 15:**

The Times incorporates the General Objections set forth above. The Times objects to this Request as overbroad and unduly burdensome to the extent that it seeks material not relevant to any party’s claims or defenses. The Times further objects to this Request to the extent that it seeks material protected by the attorney-client privilege, work-product doctrine, or common interest.

Subject to these objections, The Times responds that it will produce agreements (including work-for-hire agreements) related to authorship of the Asserted Works that can be located after a reasonable search.

**REQUEST FOR PRODUCTION NO. 16:**

All Documents and Communications relating to Your knowledge of the alleged use of Your Published Works for training Generative AI models.

**RESPONSE TO NO. 16:**

further objects to this request as overbroad, vague, and ambiguous to the extent that it calls for all documents The Times “intend[s] to provide” to any expert, testifying or not, and is not limited to documents relevant to any party’s claims or defenses in this dispute. The Times further objects to this request as outside the scope of Federal Rule of Civil Procedure 26(b)(4)(C), which requires production of documents a testifying expert relies on or facts and data they considered in rendering their opinion.

Subject to these objections, The Times responds that it will produce documents any testifying expert relies on or facts and data considered in rendering their opinion in this case.

April 8, 2024

/s/ Ian Crosby

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**CERTIFICATE OF SERVICE**

I declare that I am employed with the law firm of Susman Godfrey L.L.P., whose address is One Manhattan West, New York, NY 10001. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 8, 2024, I served a copy of:

**PLAINTIFF THE NEW YORK TIMES COMPANY'S RESPONSES AND  
OBJECTIONS TO OPENAI OPCO, LLC'S FIRST SET OF  
REQUESTS FOR PRODUCTION (NOS. 1-61)**

- ☒ **BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. Rule 5(b)(2)(E)]** by electronically mailing a true and correct copy through Susman Godfrey L.L.P.'s electronic mail system to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Fed. Rule Civ. Proc. Rule 5(b)(2)(E).
- ☐ **BY PERSONAL SERVICE** I caused to be delivered such envelope by hand to the offices of the addressee.

**See Attached Service list**

I declare under penalty of perjury that the following is true and correct.

Executed at New York, New York, this 8<sup>th</sup> day of April, 2024.

/s/ Alexander Frawley  
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